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United Nations Commission on International Trade Law
Working Group IV (Electronic Commerce)
Fifty-sixth session
New York, 16–20 April 2018

Annotated provisional agenda

I. Provisional agenda

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II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czechia (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019). The term of the membership expires on the last day prior to the beginning of the annual session of the Commission in the year indicated in parentheses.

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2. Member States not members of the Commission, non-Member States having received a standing invitation to participate as observers in the sessions and the work of the General Assembly, and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The fifty-sixth session of the Working Group will be held at the United Nations Headquarters, New York, from 16 to 20 April 2018. Meeting hours will be from 10 a.m. to 1 p.m. and from 3 to 6 p.m., except on Monday, 16 April 2018, when the session will be opened at 10.30 a.m.

4. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,[1] the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

Item 2. Election of officers

5. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairperson and a Rapporteur.

Item 4. Contractual aspects of cloud computing

(a) Background information

6. The Commission considered the topic at its forty-seventh to forty-ninth sessions, in 2014 to 2016, respectively, on the basis of proposals by Canada (A/CN.9/823 and A/CN.9/856) and oral reports by the Secretariat. At those sessions, the Commission instructed the Secretariat to conduct preparatory work on cloud computing, in parallel with preparatory work on other topics assigned to the Working Group.[2] At its forty-eighth session, the Commission requested the Secretariat to share results of the preparatory work with Working Group IV, with a view to seeking recommendations on the exact scope, possible methodology and priorities for the consideration of the Commission.[3] At its forty-ninth session, the Commission requested the Secretariat, within its existing resources, and the Working Group to continue to update and conduct preparatory work on the topics of cloud computing, identity management and trust services including their feasibility in parallel and in a flexible manner and report back to the Commission so that it could make an informed decision at a future session, including the priority to be given to each topic. In that context, it was mentioned that priority should be based on practical needs rather than on how interesting the topic was or the feasibility of work.[4]

7. After holding a preliminary exchange of views on a possible future work on cloud computing at its fifty-fourth session (Vienna, 31 October–4 November 2016) (A/CN.9/897, para. 126), the Working Group considered the topic at its fifty-fifth session (New York, 24–28 April 2017) on the basis of a note by the

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[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.

[2] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 150; ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 358; and ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), para. 229.

[3] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 358.

[4] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 235 and 353.

Secretariat (A/CN.9/WG.IV/WP.142) (A/CN.9/902, chapter IV). The Working Group decided to recommend to the Commission the preparation of a checklist of major issues that contracting parties might wish to address in cloud services contracts (A/CN.9/902, para. 15). The Working Group further suggested that the Commission could ask the Secretariat to prepare, with the help of experts, a draft checklist reflecting the preliminary considerations of the Working Group as regards the scope and contents of, and approaches to drafting, the checklist, and to submit the draft to the consideration of the Working Group (A/CN.9/902, para. 23).

8. At its fiftieth session, in 2017, the Commission, having considered the reports of the Working Group on the work of its fifty-fourth and fifty-fifth sessions, recognized that, until the next session of the Commission in 2018, both the Secretariat and the Working Group would be able to handle projects on cloud computing, IdM and trust services in parallel. The Commission therefore reaffirmed the mandate given to the Working Group at its forty-ninth session, in 2016 (see para. 6 above). It agreed to revisit that mandate at its next session, in particular if the need arose to prioritize between the topics or to give a more specific mandate to the Working Group as regards its work in the area of IdM and trust services. The Secretariat was requested to consider convening expert group meetings as it deemed necessary to expedite the work in both areas and ensure the productive use of conference resources by the Working Group. States and international organizations were invited to share with the Working Group and the Secretariat their expertise in the relevant areas of work.[5]

9. In line with the deliberations in the Working Group and the Commission, the Secretariat compiled a draft checklist on contractual aspects of cloud computing. That draft checklist was prepared with the input of experts, including during an expert group meeting on contractual aspects of cloud computing convened by the Secretariat in Vienna on 20 and 21 November 2017.

(b) Documentation

10. The Working Group will have before it a draft checklist of main contractual aspects of cloud computing contracts (A/CN.9/WG.IV/WP.148).

11. A limited number of the following background documents will be made available at the session:

(a) Report of Working Group IV (Electronic Commerce) on the work of its fifty-fourth session (A/CN.9/897);

(b) Report of Working Group IV (Electronic Commerce) on the work of its fifty-fifth session (A/CN.9/902);

(c) Possible future work on electronic commerce — Legal issues affecting cloud computing — Proposal by the Government of Canada (A/CN.9/823);

(d) Possible future work in the area of electronic commerce — Contractual issues in the provision of cloud computing services — Proposal by Canada (A/CN.9/856);

(e) Note by the Secretariat (A/CN.9/WG.IV/WP.142).

12. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Group Documents" section of the UNCITRAL website.

(c) Scheduling of consideration of agenda item 4

13. The Secretariat recommends that the Working Group devote its meetings taking place on 16 and 17 April 2018 to consideration of agenda item 4.

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[5] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 127.

Item 5. Legal issues related to identity management and trust services

(a) Background information

14. The Commission considered the topic at its forty-seventh to forty-ninth sessions, in 2014 to 2016, respectively, on the basis of a proposal by Austria, Belgium, France, Italy and Poland (A/CN.9/854) and a note by the Secretariat (A/CN.9/891). At those sessions, the Commission instructed the Secretariat to conduct preparatory work on identity management (IdM) and trust services, in parallel with preparatory work on other topics assigned to the Working Group.[6] At its forty-eighth session, the Commission requested the Secretariat to share results of the preparatory work with Working Group IV, with a view to seeking recommendations on the exact scope, possible methodology and priorities for the consideration of the Commission.[7] At its forty-ninth session, the Commission requested the Secretariat, within its existing resources, and the Working Group to continue to update and conduct preparatory work on the topics of cloud computing, IdM and trust services including their feasibility in parallel and in a flexible manner and report back to the Commission so that it could make an informed decision at a future session, including the priority to be given to each topic. In that context, it was mentioned that priority should be based on practical needs rather than on how interesting the topic was or the feasibility of work.[8]

15. At its fifty-fourth session (Vienna, 31 October–4 November 2016), the Working Group agreed that its future work on IdM and trust services should be limited to the use of IdM systems for commercial purposes and that it should not take into account the private or public nature of the IdM services provider. The Working Group also agreed that, while work on IdM could be taken up before work on trust services, the identification and definition of terms relevant for IdM and trust services should take place simultaneously given the close relationship between the two. It was further agreed that focus should be placed on multi-party identity systems and on natural and legal persons, without excluding consideration of two-party identity systems and of physical and digital objects when appropriate. In addition, it was agreed that the Working Group should continue its work by further clarifying the goals of the project, specifying its scope, identifying applicable general principles and drafting necessary definitions (A/CN.9/897, paras. 118–120 and 122).

16. At its fifty-fifth session (New York, 24–28 April 2017), the Working Group considered the topic on the basis of a note by the Secretariat (A/CN.9/WG.IV/WP.143) and submissions by States (A/CN.9/WG.IV/WP.141, A/CN.9/WG.IV/WP.144, A/CN.9/WG.IV/WP.145 and A/CN.9/WG.IV/WP.146) (A/CN.9/902, chapter V). The Working Group reaffirmed the decisions taken at its fifty-fourth session as regards the scope of a future work on IdM (A/CN.9/902, para. 29). It identified the legal recognition and mutual recognition of IdM and trust services as the goals of the work of UNCITRAL in that area (A/CN.9/902, para. 45). The Working Group agreed that party autonomy, technological neutrality, functional equivalence and non-discrimination would guide its work in the area of IdM (A/CN.9/902, para. 52), with special considerations as regards the application of the principle of functional equivalence to IdM (A/CN.9/902, para. 63). Among other issues to be considered in its work on IdM and trust services, the Working Group identified the relationship between IdM law and privacy law, between IdM law and data security law, and between contract-based system rules and other law (A/CN.9/902, para. 65), and the notions of legal recognition, mutual recognition, attribution, reliance, liability and risk allocation, and transparency (A/CN.9/902, para. 85). Subject to the Commission's decision as regards a future mandate of the Working Group, the Working Group asked the Secretariat to revise document A/CN.9/WG.IV/WP.143 by including definitions and concepts listed in paragraph 20 of document

[6] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 150; ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 358; and ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), para. 229.

[7] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 358.

[8] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 235 and 353.

A/CN.9/WG.IV/WP.144, without prejudice to the future direction of possible work by UNCITRAL on IdM and trust services (A/CN.9/902, para. 92). In light of divergent views expressed on the timing of work on IdM and trust services, that aspect was deferred for consideration by the Commission (A/CN.9/902, paras. 93–97).

17. (For the decision of the Commission at its fiftieth session, in 2017, see para. 8 above.) The Secretariat convened an expert group meeting on legal aspects of identity management and trust services in Vienna on 23 and 24 November 2017.

(b) Documentation

18. Under provisional agenda item 5, the Working Group will have before it a note by the Secretariat containing updates on the preparatory work held by the Secretariat on IdM and trust services (A/CN.9/WG.IV/WP.149) and a note containing revised definitions of terms and concepts relevant to identity management and trust services (A/CN.9/WG.IV/WP.150). Proposals by States may be expected.

19. A limited number of the following background documents will be made available at the session:

(a) United Nations Convention on the Use of Electronic Communications in International Contracts;

(b) UNCITRAL Model Law on Electronic Commerce with Guide to Enactment;

(c) UNCITRAL Model Law on Electronic Signatures with Guide to Enactment;

(d) Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods;

(e) Report of Working Group IV (Electronic Commerce) on the work of its fifty-fourth session (A/CN.9/897);

(f) Report of Working Group IV (Electronic Commerce) on the work of its fifty-fifth session (A/CN.9/902);

(g) Possible future work in the area of electronic commerce — legal issues related to identity management and trust services — Proposal by Austria, Belgium, France, Italy and Poland (A/CN.9/854);

(h) Overview of identity management — Background paper submitted by the Identity Management Legal Task Force of the American Bar Association (A/CN.9/WG.IV/WP.120);

(i) Submissions by the Russian Federation (A/CN.9/WG.III/WP.136 and A/CN.9/WG.IV/WP.141);

(j) Proposal by Austria, Belgium, France, Italy, the United Kingdom of Great Britain and Northern Ireland, and the European Union (A/CN.9/WG.IV/WP.144);

(k) Submission by the United States of America (A/CN.9/WG.IV/WP.145);

(l) Submission by the United Kingdom of Great Britain and Northern Ireland (A/CN.9/WG.IV/WP.146);

(m) A note by the Secretariat (A/CN.9/891);

(n) A note by the Secretariat containing definitions of terms and concepts relevant to identity management and trust services (A/CN.9/WG.IV/WP.143).

20. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Group Documents" section of the UNCITRAL website.

(c) Scheduling of consideration of agenda item 5

21. The Secretariat recommends that the Working Group devote its meetings taking place on 18 and 19 April 2018 to consideration of agenda item 5.

Item 6. Technical assistance and coordination

22. The Working Group will hear an oral report on technical assistance and coordination activities undertaken by the Secretariat related to the promotion of UNCITRAL texts on electronic commerce.

Item 7. Other business

23. The Working Group may wish to consider other issues related to its work programme, in particular any activities in furtherance of the mandate received from the Commission with respect to other topics selected for future work of the Working Group and to legal issues relating to electronic single-window facilities and paperless trade facilitation.[9]

24. At its fifty-sixth session, the Working Group may also wish to take note that its fifty-seventh session is tentatively scheduled to be held in Vienna from 19 to 23 November 2018, those dates being subject to confirmation by the Commission at its fifty-first session, scheduled to be held in New York from 25 June to 13 July 2018.

Item 8. Adoption of the report

25. The Working Group may wish to adopt, at the close of its session, on Friday, 20 April 2018, a report for submission to the fifty-first session of the Commission. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting (on Friday afternoon) and subsequently incorporated into the report.

[9] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 240. For the most recent consideration of the issue, see ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 238–240.